

STORM WATER OPERATION AND MAINTENANCE AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2005, by and between _____ (hereinafter called the "Landowner"), _____ (hereinafter called the "HOA") and WILLIAMSON COUNTY, TENNESSEE (hereinafter called "Williamson County Government"):

W I T N E S S E T H :

WHEREAS, the Williamson County Board of Commissioners has by proper resolution, dated April 18, 1988, adopted a comprehensive zoning ordinance which adopts design standards for drainageways in site plan development, and requires that drainage matters be reviewed and approved in all site plan applications and approvals; and

WHEREAS, the Williamson County Board of Commissioners adopted Storm Water Management Regulations, effective January 1, 2005, governing storm water discharges, storm water management, flood control, erosion prevention, and water quality protection; and

WHEREAS, the Williamson County Regional Planning Commission adopted Subdivision Regulations which require drainage data and approval for preliminary and final plats; and

WHEREAS, the Landowner and/or HOA is the owner of certain real property, more particularly described as _____, and being the same property conveyed to Landowner and/or HOA on _____, by Deed Book _____, page _____, Register of Deeds, Williamson County, Tennessee (hereinafter called the "property"); and

WHEREAS, the Landowner is proceeding to build on and develop the property; and

WHEREAS, the Construction Plans for Grading, Paving, Drainage and Water for _____ (hereinafter called the "Plans"), which are expressly made a part hereof and incorporated, as approved by the Williamson County Engineer, provide for management and/or detention of storm water and the placement of certain erosion controls, within the confines of the property; and

WHEREAS, Williamson County Government requires that onsite storm water facilities as shown on the Plans be constructed and adequately maintained by the Landowner and/or HOA, if created;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The onsite storm water management facilities shall be constructed, owned and/or

maintained by the Landowner and/or HOA in accordance with the plans and specifications identified in the Plans.

2. The Landowner and/or HOA shall maintain the storm water management facilities as shown on the Plans in good working order acceptable to the Williamson County Government.

3. The Landowner and/or HOA shall provide, to the Williamson County Government, and record with the Williamson County Register of Deeds, a drainage easement as described in Exhibit "A".

4. The Landowner and/or HOA shall provide to the Williamson County Government, a long-term operation and maintenance plan, as required by the Williamson County Storm Water Management Regulations Section 5, subject to approval by Williamson County Government, a copy of which is attached hereto as Exhibit "B" and incorporated herein.

5. The Landowner and/or HOA shall provide to the Williamson County Government documentation sufficient to demonstrate financial ability to fulfill the financial obligation contained within the long-term operation and maintenance plan, as required by the Williamson County Storm Water Management Regulations, Section 5, subject to approval by Williamson County Government, a copy of which is attached hereto as Exhibit "C" and incorporated herein.

6. The Landowner and/or HOA hereby grants permission to Williamson County Government, its authorized agents, and employees to enter the property via the easement described in Exhibit "A" and to inspect the storm water management facilities whenever it deems necessary. Whenever possible, Williamson County Government shall notify the Landowner and/or HOA prior to entering the property.

7. The Landowner and/or HOA shall provide inspection reports, certified by an engineer, annually to Williamson County Government. Such inspection report shall contain all of the information and shall be submitted as required by the Storm Water Management Regulations, Section 5.

8. In the event the Landowner and/or HOA fails to maintain storm water management facilities as shown on the Plans in good working order acceptable to Williamson County Government, Williamson County Government may enter the property and take whatever steps it deems necessary to maintain said storm water management facilities. This provision shall not be construed to allow Williamson County Government to erect any structure of a permanent nature on the land of the Landowner and/or HOA without first obtaining written approval of the Landowner and/or HOA. It is expressly understood and agreed that Williamson County Government is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on Williamson County Government.

9. In the event Williamson County Government determines it is in the best interest of its citizens and the residents of the area affected by the drainage facilities; and therefore, pursuant

to this Agreement performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner and/or HOA shall reimburse Williamson County Government upon demand, within ten (10) days of receipt thereof for all costs incurred by Williamson County hereunder. Failure to reimburse Williamson County Government for all costs and expenses associated with any work undertaken by Williamson County Government pursuant to this Paragraph, shall result in a lien being placed on the property owned by Landowner and/or HOA until said expenses and costs are paid. Williamson County Government shall have all power and authority to enforce said lien as available to it under the law. In no event shall Williamson County Government's performance of any work pursuant to the authority granted herein be construed or interpreted in any way as taking any responsibility or ownership, temporarily or otherwise, by Williamson County Government for the long-term maintenance of the drainage facilities nor does it effect a waiver of any provision of this Agreement. In no event shall Williamson County Government's performance of any work pursuant to the authority granted herein be construed or interpreted in any way as creating a continuing duty upon Williamson County Government to further perform any work of any nature.

10. It is the intent of the Agreement to insure the proper maintenance of onsite storm water management facilities by the Landowner and/or HOA; provided, however, that this Agreement shall not be deemed to create or effect any additional liability of any party for damage alleged to result from or be caused by storm water drainage.

11. The Landowner and/or HOA, its executors, administrators, assigns, and any other successors in interest, shall indemnify and hold Williamson County Government and its agents, officers and employees harmless for any and all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against Williamson County Government from the construction or maintenance of the storm water management facilities by the Landowner and/or HOA.

12. Landowner and/or HOA shall indemnify and hold harmless County, its officers, agents and employees from:

- A. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Landowner and/or HOA, its officers, employees and/or agents, including its sub or independent contractors;
- B. Any claims, damages, penalties, costs and attorney fees arising from any failure of Landowner and/or HOA, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws; and
- C. Any claims, damages, penalties, costs and attorneys fees arising from any action brought against Williamson County by any of Landowner and/or HOA's officers, employees and/or agents arising out of any injury incurred

by such officer, employee and/or agent in the course of the performance of this agreement, regardless of the cause of such injury.

- D. Landowner and/or HOA shall pay Williamson County any expenses incurred as a result of Landowner and/or HOA's failure to fulfill any obligation in a professional and timely manner under this agreement.

13. Williamson County cannot and will not indemnify, defend or hold harmless in any fashion Landowner and/or HOA from any claims arising from any failure, regardless of any language in any attachment or other document that the Landowner and/or HOA may provide.

14. Without limiting its liability under this agreement, Landowner and/or HOA will procure and maintain at its expense during the life of the agreement, insurance of the types and in the minimum amounts as required by Tennessee Law. In addition, Landowner and/or HOA agrees to procure and maintain property insurance and general liability insurance in amounts not less than One Million Dollars (\$1,000,000.00). Said insurance shall issued by a company licensed to do business in Tennessee and shall name Williamson County as an additional insured in regards to this agreement only. Landowner and/or HOA agrees that it shall not terminate the insurance policy without providing County with thirty (30) days written notice. Copy of said insurance coverage shall be provided to and approved by Williamson County's Risk Management department. Throughout the term of this agreement, Landowner and/or HOA shall provide an updated certificate of insurance upon expiration of the current certificate.

15. Landowner and/or HOA agrees to comply with the provisions contained in Title VI of the 1964 Civil Rights Act (42 U.S.C. 2000d), and any federal regulations specific to its responsibilities outlined in this agreement.

16. This agreement shall be governed by the laws of the State of Tennessee. In the event that any section and/or term of this agreement, or any exhibits hereto, becomes subject to litigation, the venue for such action will be in Williamson County, Tennessee.

17. All notices, demands and requests to be given hereunder by either party shall be in writing and must be sent by certified or registered mail and shall be deemed properly given if tendered at the address below or at such other address as either party shall designate by written notice to the other.

COUNTY: **WILLIAMSON COUNTY, TENNESSEE**
Williamson County Engineering
County Administrative Complex
1320 West Main Street, Suite 400
Franklin, Tennessee 37064

Landowner: _____

HOA:

18. In the event that any section and/or term of this agreement is found by a court of competent jurisdiction to be in contravention of the Constitution of this State or of the United States, or any law of this State, such section and/or term is to be severable from the remainder of the agreement, and the remaining sections and/or terms are to be fully enforceable.

19. This agreement and any exhibits included herewith at the time of execution of this agreement contain the entire agreement between the parties, and no statement, promises, or inducements made by either party or agent of either party that is not contained in this written agreement shall be valid or binding; and this agreement may not be enlarged, modified, or altered except in writing signed by the parties and attached hereto.

20. The parties may agree to participate in non-binding mediation in an attempt to resolve any disputes. Notwithstanding the forgoing statement, any claims, disputes or other matters in question between the parties to this agreement arising out of or relating to this agreement or breach thereof shall be subject to and decided by a court of law.

21. The provisions of this agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Neither this agreement nor any of the rights and obligations of Landowner and/or HOA hereunder shall be assigned or transferred in whole or in part without the prior written consent of County. Any such assignment or transfer shall not release Landowner and/or HOA from its obligations hereunder.

22. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the parties against whom charged.

23. Landowner and/or HOA shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

24. This Agreement shall be recorded among the land records of Williamson County, and shall constitute a covenant running with the land, and shall be binding on the Landowner and/or HOA, its administrators, executors, assigns, heirs, and any other successors in interest.

WITNESS the following signatures and seals:

WILLIAMSON COUNTY:

County Mayor

RECOMMENDED:

Department Head

Department

APPROVED AS TO INSURANCE:

Department of Risk Management

APPROVED AS TO FORM AND
LEGALITY:

Williamson County Attorney

LANDOWNER

By: _____

Title: _____

Sworn to and subscribed to before me, a
Notary Public, this _____ day of
_____, 200__, by
_____, the
_____ of Landowner
and duly authorized to execute this
instrument on Landowner's behalf.

Notary Public

My Commission Expires _____

HOA

By: _____

Title: _____

Sworn to and subscribed to before me, a
Notary Public, this _____ day of
_____, 200__, by
_____, the
_____ of HOA and duly
authorized to execute this instrument on
HOA's behalf.

Notary Public

My Commission Expires _____

*Plan _____ refers to site plan prepared by _____
dated _____, on file as approved by the Williamson County Planning Commission
and recorded in plat book _____, page _____, R. O. W. C.

EXHIBIT “A”

PROPERTY DESCRIPTION

EXHIBIT “B”

LONG-TERM OPERATION AND MAINTENANCE PLAN

EXHIBIT “C”

FINANCIAL MECHANISM FOR PLAN